

No. _____

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

IN RE PERSONAL RESTRAINT
OF MARK J. GOSSETT,

Petitioner,

PERSONAL RESTRAINT
PETITION

A. Status of Petitioner

I, Mark J. Gossett, DOC #317246, Stafford Creek Corrections Center, 191 Constantine Way, Aberdeen, Washington 98520, apply for relief from confinement. I am now in custody because of the following type of court order: Judgment and Sentence dated June 10, 2010.

1. The court in which I was sentenced is: Thurston County Superior Court, Judge Carol Murphy presiding.

2. I was convicted of the crimes of Rape of a Child in the Second Degree (2x); Child Molestation in the Second Degree (2x).

3. The jury returned guilty verdicts on April 30, 2010. I was sentenced on June 10, 2010. The judge who imposed sentence was Carol Murphy.

4. My lawyer at trial court was Clifford Cordes.

5. I appealed to Division II of the Court of Appeals. I filed a Petition for Review to the Washington Supreme Court, which was denied.

1 My lawyer on appeal was Thomas Doyle.

2 The decision of the appellate court was not published.

3 6. Since my conviction I have not asked a court for any other relief from my sentence other
4 than what I have stated above.

5 7. N/A.

6 8. If the answers to the above questions do not really tell about the proceedings and the
7 courts, judges and attorneys involved in your case, tell about it here: N/A.

8
9 B. Grounds for Relief

10 I claim that I have three reasons for this court to grant me relief from the conviction and
11 sentence described in Part A.

12 1. I should be given a new trial or released from confinement because:

13 A. My rights to effective assistance of counsel at trial, as guaranteed by the Sixth and
14 Fourteenth Amendments to the United States Constitution and Const. Art. I § 22 of the Washington
15 Constitution, were denied;

16 B. My rights to effective assistance of counsel on appeal, as guaranteed by the Sixth
17 and Fourteenth Amendments to the United States Constitution and Const. Art. I § 22 of the
18 Washington Constitution, were denied; and

19 C. I was denied my due process rights to a fair trial preserved by the Fifth, Sixth and
20 Fourteenth Amendments to the United States Constitution and Art. I § 3 & § 22 of the Washington
21 Constitution when the prosecuting attorney engaged in numerous instances of misconduct.

22 2. The following facts are important when considering my case:

23 Prior to trial, the parties argued pretrial motions. There was a discussion regarding "404(b)
24 evidence" with counsel stipulating that Mr. Gossett's daughter could testify about prior physical
25

1 abuse. RP 59:19–62:17. This included a prior conviction for Fourth Degree Assault to demonstrate
2 that he was not a peaceful man. RP 60:12-23. There was no analysis conducted on the record to
3 determine its relevance, its limitations, or whether its prejudicial value was outweighed by its
4 prejudicial effect. Further, while the stipulation focused on alleged abuse inflicted by Mr. Gossett
5 and Linda Gossett, the parties discussed the issue in the context of ER 404(b) and not ER 608,
6 which should have been the rule applicable to Linda Gossett’s prior conduct.
7

8 Subsequently, the State repeatedly asked questions of the witnesses regarding the physical
9 abuse allegedly inflicted by both Gossett’s against the victim and her siblings without objection or
10 any limiting instruction. RP 215:12-216:5. RP 276:9-278:10; RP 279:12-281:1; RP 283:19-284:16;
11 RP 315:9-316:8. Additionally, Linda Gossett was portrayed as a very controlling person. RP 223:6-
12 23; RP 245:18-25. Defense counsel even asked Mr. Gossett about an affair, which was then used by
13 the prosecutor to attack his credibility during closing arguments. RP 782:18-783:18; RP 1449:1-19.
14

15 While the prosecutor argued for the admission of the evidence to explain the delayed
16 disclosures and rebut assertions that Mr. Gossett was a peaceful man [RP 59-61], the victim
17 testified that the reason she disclosed was because she was tired about how she was treated by the
18 church members. RP 308:2-11. Ultimately, the prosecutor never did argue that anything related to a
19 delayed disclosure or anything else related to the stated reason for its admission. RP 1419:17–
20 1457:17. Nor did Mr. Gossett testify that he was a peaceful man. Nor did the defense even bring it
21 up during closing arguments as a basis for questioning the credibility of the victim. RP 1458:4–
22 1510:25.
23

24 During closing arguments to the jury, the prosecutor continually engaged in prosecutorial
25 misconduct, from arguing a conviction based on propensity, to using defamatory comments directed
26 at Mr. Gossett, his wife, and the church that they attended. All of which had nothing to do with the
27

1 elements of the offenses, but was merely designed, in a "scorched earth" argument, to appeal to the
2 passions and prejudices of the jury.

3 Specifically, at various points she argued, in attacking Linda and Mark Gossett's credibility:

4 What do we know about the Gossetts? They beat the hell out of
5 Tristen for missing a word. He was locked in a car, beaten with a
6 wooden spoon, beaten with a belt, beaten with a piece of scrap wood,
7 for God's sake. He was removed from the house because he was
8 beaten by his family, and particularly this defendant, and he's
9 convicted for it.

10 RP 1425:4-10.

11 They're vindictive people, folks.

12 RP 1439:13-15.

13 ... it's hell living with the Gossetts.

14 RP 1442:1-3.

15 Her relationship with the abuser, her relationship with Mark Gossett,
16 is such that on the physical abuse scale, Linda is much more heinous,
17 much more brutal with the kids on a regular basis right? We know
18 that. We know that by Linda's testimony, by Alisha's, even Sam. We
19 know that Linda is beating everybody, especially Tristen, especially
20 Alisha. Those are the bad kids, right? They're the ones getting the
21 brunt of it.

22 RP 1445:12-23.

23 And what does the affair tell you about his Personality? It tells you a
24 lot of stuff about him. Number one, he's got very poor sexual
25 boundaries right? Very poor judgment. Okay. Number two, he's
26 willing to violate the trust of the family member, his wife. All right.
27 Number three, his needs are not being met by his wife, because he's
seeking sex from some other source. And, in this case, we know by
his own admission it's outside of the marriage, right? But we also
know from Alisha that he's getting it from her as well.

And what else do we know? Well, he's willing to violate the trust of
his beloved church, the covenants of his church. He's willing to
violate that. He has no problem violating the trust of anybody. The

1 kids that he beats, the child he molests, the church he's supposed to
2 express faith and covenants of and the trust of his wife, he has no
3 problem violating all of that.

4 RP 1449:1-19.

5 "Did you hear from any of their little churchy friends that came up
6 and testified for them..."

7 RP 1450:16-17.

8 And then what is the response of the non-offending person? That's
9 mommy dearest, Linda Gossett. What's her response? Well, Alisha
10 was so afraid that Linda was going to find out, because she thought
11 she would be beaten even worse. Right? ...

12 And by the way, the heavy-iron-fisted Linda Gossett is going to do
13 it.

14 RP 1446:24-1447:7.

15 And the beauty of having a group conform through oppression is that
16 you only need to make an example out of one person. That's what
17 the army does, right? You punish one for the whole group, they get
18 to see what happens to that one. Well, that's what the Gossetts did.
19 They beat on Tristen. They beat on Alisha. All the other kids
20 conformed because they knew.

21 RP 1447:15-22.

22 And what do we know about Linda? She expects perfection. She's
23 a domineering, controlling, very abusive and brutal parent....Do you
24 think all of them were going to be wanting to play the violin? You
25 know, Guitar Hero is a hit, but violin hero is even better, right? No.
26 No. Violin was the chosen instrument. ...

27 What about Alisha? Everybody is magically involved in the
Thurston County Youth Football League.... We know that they're
all kind of glommed like this little Brady Bunch at each little place.
There's no individuality. There's no individuality. There's no
choices anywhere. Do you notice that about that whole family?

Linda expects complete obedience as well...She's also overwhelmed
by the fact she has to take care of everything. She's pissed off at her
husband...

1 RP 1453:2-1454:8.

2
3 In addition to these arguments, the prosecutor essentially argued that Mr. Gossett should be
4 convicted because of propensity based on other bad acts, all of which was admitted without
5 objection by defense counsel. For example, the prosecutor continually argued all of the "corporal
6 punishment" suffered by all of the children at the hands of Linda Gossett supported a finding
7 against Mr. Gossett. RP 1423:10-1425:18; RP 1431:13-15; RP 1441:19-1442:13; RP 1445:19-23;
8 RP 1454:14-19. The justification for the argument apparently was, as argued by the prosecutor:
9

10 What do we know about the Gossetts? It's way more than that.
11 Their version of little tap leaves bruises. We know that. And they
12 have this signature about them, the Gossett signature. And it's not
13 that they did it in the past, they're going to do it again. But what do
14 we have? We have a great example from Tristen. You know, years
15 later, in 2007, leopards don't change their spots, folks. They carry
16 on until they're forced to change, right?

17 RP 1424:19-1425:4.

18 What do we know about the Gossetts in general? Well, past behavior
19 is the best predictor of future behavior.

20 RP 1439:16-18.

21 It is one thing to cause pain and suffering of a child, but then to
22 hinder them on top of that from getting help, to getting a better
23 family, to recovering from their abuse, that's another. And that's
24 what the Gossetts are all about. They're all about making their kids
25 pay. And they did the same thing to Alisa.

26 That's their signature, folks. They like to make their kids pay.

27 RP 1440:11-23.

28 The prosecutor went so far as to argue that all of Mr. Gossett's conduct "violated the trust of
29 his beloved church, the covenants of his church. He's willing to violate that." RP 1449:12-19. This
30 included the physical abuse to the kids, and the affair that was admitted into evidence.

1 As previously mentioned, at no time did counsel object. Furthermore, in his own closing,
2 with the exception that he commented that eighty percent of the State's argument centered on these
3 other instances of conduct, "...to make Mark look bad", there was no further mention of it
4 throughout his closing argument. RP 1461:1-1462:11.

5 All of these facts are in the trial record. I am unaware of any newly discovered evidence
6 that would require additional witnesses.

7
8 3. The following reported court decisions in cases similar to mine show the error I believe
9 happened in my case:

10 Darden v. Wainwright, 477 U.S. 168, 106 S.Ct. 2464, 91 L.Ed.2d 144 (1986)

11 Greer v. Miller, 483 U.S. 756, 107 S.Ct. 3102, 97 L.Ed.2d 618 (1987)

12 In re Haverty, 101 Wn.2d 498, 681 P.2d 835 (1984)

13 In re Pers. Restraint of Nichols, 171 Wn.2d 370, 256 P.3d 1131 (2011)

14 In re Personal Restraint of Lord, 123 Wn.2d 296, 868 P.2d 835 (1994)

15 In the Matter of the Personal Restraint of Crace, 174 Wn.2d 835, 280 P.3d 1102 (2012)

16 In the Matter of the Personal Restraint of Glasmann, 175 Wn.2d 696, 286 P.3d 673
(2012)

17 In the Matter of the Personal Restraint of Maxfield, 133 Wn.2d 332, 945 P.2d 196
(1997)

18 In the Matter of the Personal Restraint of Monschke, 160 Wn.App. 479, 251 P.3d 884
(2010)

19 In the Matter of the Personal Restraint of Pirtle, 136 Wn.2d 467, 965 P. 2d 593 (1998)

20 In the Matter of the Personal Restraint of Taylor, 105 Wn.2d 683, 717 P.2d 755 (1986)

21 State v. Ermert, 94 Wn.2d 839, 621 P.2d 121 (1980)

22 State v. Fisher, 165 Wn.2d 727, 202 P.3d 937 (2009)

23 State v. Fuller, 169 Wn.App. 797, 282 P.3d 126 (2012)

24 State v. Grier, 171 Wn.2d 17, 246 P.3d 1260 (2011)

25 State v. Humphries, 170 Wn.App. 777, 285 P.3d 917 (2012)

1 State v. Johnson, 158 Wn.App 677, 243 P.3d 936 (2010)
2 State v. Kilgore, 147 Wn.2d 288, 53 P.3d 974 (2002)
3 State v. Kylo, 166 Wn.2d 856, 215 P.3d 177 (2009)
4 State v. Monday, 171 Wn.2d 667, 257 P.3d 551 (2011)
5 State v. Saunders, 91 Wn.App 575, 958 P.2d 364 (1998)
6 State v. Stenson, 132 Wn.2d 668, 940 P.2d 1239 (1997)
7 State v. Venegas, 155 Wn.App. 507, 228 P.3d 813 (2010)
8 State v. Walker, 164 Wn.App. 724, 265 P.3d 191 (2011)
9 Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)
10 Tower v. Glover, 467 U.S. 914, 104 S.Ct. 2820, 81 L.Ed.2d 758 (1984)
11 United States v. Cabrera, 222 F.3d 590 (9th Cir. 2000)

12 4. The following statutes and constitutional provisions should be considered by the court:

13 ER 404(b)

14 ER 608

15 Fifth Amendment to the United States Constitution

16 Sixth Amendment to the United States Constitution

17 Fourteenth Amendment to the United States Constitution

18 Article 1 § 3 of the Washington State Constitution

19 Article 1 § 22 of the Washington State Constitution

20 5. This petition is the best way I know to get the relief I want, and no other way will work
21 as well because my direct of appeal of my conviction has been exhausted and the mandated issued.

22 C. Statement of Finances

23 I have retained counsel, therefore, the statement of finances does not apply.
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1 D. Request for Relief

2 I want this court to vacate my conviction and remand the case for a new trial.

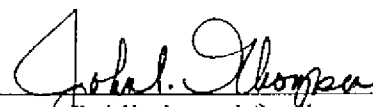
4 E. Oath of Petitioner

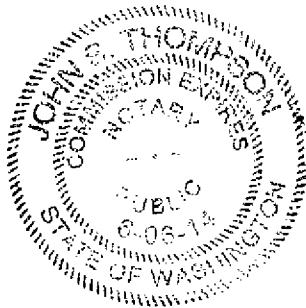
7 THE STATE OF WASHINGTON)
8 COUNTY OF GRAYS HARBOR) ss.

9 After being first duly sworn, on oath, I depose and say: That I am the petitioner, that I have
10 read the petition, know its contents, and I believe the petition is true.

12 
13 Mark J. Gossett, Petitioner

14 SUBSCRIBED AND SWORN to before me this 5 day of April, 2013.

16 
17 Notary Public in and for the
18 State of Washington, residing
19 at Mason County.



1 If a notary is not available, explain why none is available and indicate who can be contacted
2 to help you find a notary:

3 N/A
4
5

6 Then sign below:

7 I declare that I have examined this petition and to the best of my knowledge and belief it is
8 true and correct.

9 Dated this _____ day of April, 2013.
10

11 _____
12 MARK J. GOSSETT, Petitioner
13

14 OR:
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1 E. Oath of Attorney for Petitioner

2 STATE OF WASHINGTON)
3) ss.
4 County of Pierce)

5 After being first duly sworn, on oath, I depose and say: That I am the attorney for the
6 petitioner, that I have read the petition, know its contents, and I believe the petition is true.

7 DATED this 11 day of April, 2013.

8 HESTER LAW GROUP, INC., P.S.
9 Attorneys for Petitioner

10 By: [Signature]
11 WAYNE C. FRICKE
12 WSB #16550

13 SUBSCRIBED AND SWORN to before me this 11 day of April, 2013.



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27

[Signature]
NOTARY PUBLIC in and for the
State of Washington, residing
at [Signature]
My commission expires: 11-5-14

HESTER LAW OFFICES

April 11, 2013 - 4:30 PM

Transmittal Letter

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Case Name: In Re Personal Restraint of Mark J. Gossett

Court of Appeals Case Number:

Is this a Personal Restraint Petition? ☒ Yes ☐ No

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Statement of Arrangements

Motion: ____

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Statement of Additional Authorities

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Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____

Hearing Date(s): ____

☒ Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: ____

Comments:

No Comments were entered.

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